

REMARKS

The present amendment is in response to the final Office Action, dated May 28, 2004, where the Examiner has rejected claims 28-47. By the present amendment, claims 36-37 and 46-47 have been cancelled, and claims 28, 32, 38 and 42 have been amended. After the present amendment, claims 28-35 and 38-45 are pending in the application. Reconsideration and allowance of pending claims in view of the amendments and the following remarks are respectfully requested.

A. Rejection of Claims 32 and 42 under 35 U.S.C. § 112, ¶ 2

The Examiner has rejected claims 32 and 42, under 35 U.S.C. § 112, ¶ 2, stating that the term “around five peaks and gains” is vague and indefinite. By the present amendment, applicant has amended claims 32 and 42 to replace “around five peaks and gains” with --less than five peaks and gains--. Accordingly, the Examiner’s rejection of claims 32 and 42 under 35 U.S.C. § 112, ¶ 2, has been overcome.

B. Rejection of Claims 28-30 and 38-40 under 35 U.S.C. § 102(e)

The Examiner has rejected claims 28-30 and 38-40, under 35 U.S.C. § 102(e), as being anticipated by Oshikiri, et al. (USPN 6,470,310) (“Oshikiri”). Applicant respectfully disagrees; however, in order to expedite the prosecution of the present application, applicant has amended claim 28 to include all of the limitations of dependent claims 36-37, and applicant has cancelled claims 36-37. Applicant respectfully submits that claim 28, as amended (which has been amended to include the limitations of claims 36-37, which have been considered and examined by the Examiner), is patentably distinguishable over prior art of record.

Specifically, it is respectfully submitted that claim 37 has been rejected by the Examiner under 35 USC § 103(a), as being unpatentable over Oshikiri in view of Akamine, et al. (USPN 5,265,167) (“Akamine”) in further view of Su, et al. (USPN 6,014,622) (“Su”).

The Examiner acknowledges that Oshikiri in view of Akamine “lacks the method wherein said pitch lag and gain from said previous subframe are scaled and added to said current subframe to enhance an amount of data used to described said current excitation signal.” (Office Action, page 8.) However, the Examiner states that Su discloses such missing limitation form Oshikiri and Akamine.

Applicant respectfully submits that, according to 35 USC § 103(c), Su does not qualify as a prior art reference for the purpose of Examiner’s rejection under 35 USC § 103(a). 35 USC § 103(c) reads as follows:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. (emphasis added.)

Applicant respectfully submits that the Su patent, and the subject matter and the claimed invention of the present application (and its U.S. Provisional Application No. 60/233,042, filed September 15, 2000) were, at the time the invention of the present application was made, owned by Conexant Systems, Inc. or subject to an obligation of assignment to Conexant Systems, Inc. As shown in the assignment document recorded for the Su patent having Reel/Frame No. 010557/0145 and executed on October 13, 1998, Rockwell Semiconductor Systems, Inc. (assignee of the Su patent) changed its name to Conexant Systems, Inc. (the assignee of the present application (and its U.S. Provisional Application No. 60/233,042, filed September 15,

2000.) Therefore, the Su patent cannot be considered a prior art reference for the purpose of rejecting claims of the present application under 35 USC § 103(a).

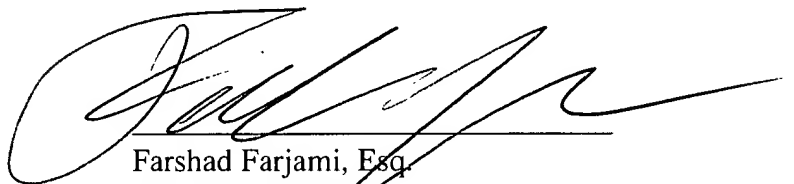
Accordingly, applicant respectfully submits that, as acknowledged by the Examiner, claim 28, as amended, is patentably distinguishable over Oshikiri and Akamine and should be allowed. Further, claims 29-35 depend from claim 28, as amended, and should be allowed at least for the same reasons.

Similarly, applicant has amended claim 38 to include all of the limitations of dependent claims 46-47, and applicant has cancelled claims 46-47. Applicant respectfully submits that claim 38 and its dependent claims 39-45 should also be allowed at least for the same reasons stated above in conjunction with patentability of claim 28.

C. Conclusion

For all the foregoing reasons, an early allowance of claims 28-35 and 38-45 pending in the present application is respectfully requested. The Examiner is invited to contact the undersigned for any questions.

Respectfully Submitted;
FARJAMI & FARJAMI LLP



Farshad Farjami, Esq.
Reg. No. 41,014

Farshad Farjami, Esq.
FARJAMI & FARJAMI LLP
26522 La Alameda Ave., Suite 360
Mission Viejo, California 92691
Tel: (949) 282-1000
Fax: (949) 282-1002

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service "First Class Mail Post Office to addressee" under 37 C.F.R. Sec. 1.10 addressed to: Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450, on 7-9-04.

Susan Hanson
Name

Susan Hanson
Signature